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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 CARLOS RUIZ,

9 Plaintiff,

10 v.

11 NEVADA DEPARTMENT OF
12 CORRECTIONS, *et al.*,

13 Defendants.

Case No.: 3:18-cv-00206-RCJ-CSD

ORDER

Re: ECF No. 90

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15 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 90).
16 Defendants have opposed Plaintiff's motion (ECF No. 95) and Plaintiff has replied (ECF No. 96).

17 Plaintiff bases his motion on the fact that he has been denied access "to books, caselaw,
18 brass slips and other needs for the preparation of a pending trial." (ECF No. 90 at 1.)

19 While any *pro se* inmate such as Mr. Ruiz would likely benefit from services of counsel,
20 that is not the standard this court must employ in determining whether counsel should be appointed.
21 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

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1 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
2 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
3 Court has generally stated that although Congress provided relief for violation of one's civil rights
4 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
5 federal court and not a right to discover such claims or even to litigate them effectively once filed
6 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

7 In very limited circumstances, federal courts are empowered to request an attorney to
8 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
9 however, are exceedingly rare, and the court will grant the request under only extraordinary
10 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
11 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

12 A finding of such exceptional or extraordinary circumstances requires that the court
13 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
14 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
15 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
16 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to
17 articulate his claims to the court.

18 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

19 If all that was required to establish successfully the
20 complexity of the relevant issues was a demonstration of
21 the need for development of further facts, practically all
22 cases would involve complex legal issues. Thus,
23 although *Wilborn* may have found it difficult to
articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the

1 complexity of the issues involved was sufficient to
2 require designation of counsel.

3 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
4 the request for appointment of counsel because the Plaintiff failed to establish the case was
5 complex as to facts or law. 789 F.2d at 1331.

6 The substantive claims remaining in this action are not unduly complex. Plaintiff's First
7 Amended Complaint is proceeding on Count I, alleging that Plaintiff's right to worship on the
8 actual holy days of his religion were infringed and that he was denied access to grape juice and
9 matzo for worship, and on Count II, alleging that Plaintiff was denied access to an organic kosher
10 menu in violation of his First Amendment rights. (ECF No. 82.) These claims are not so complex
11 that counsel needs to be appointed to prosecute them.

12 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
13 the likelihood of success on the merits of his claims. Plaintiff has not provided any evidence, nor
14 has he made any argument in his motion for appointment of counsel, showing that he is likely to
15 prevail on the merits of his claims.

16 Plaintiff contends that he has been denied access "to books, caselaw, brass slips and other
17 needs for the preparation of a pending trial." (ECF No. 90 at 1.) Attached to Defendants' opposition
18 is the declaration of Kheila Brice, Law Library supervisor of the Southern Desert Correctional
19 Center, who denies Plaintiff's claim that he does not have access to the law library. (ECF No. 95-
20 1). It appears to the court that Plaintiff has been able to research the law, make legal arguments,
21 and file the instant motion for appointment of counsel. Accordingly, even if taken as true, the
22 Plaintiff's allegations do not have the effect of denying him meaningful access to the courts.
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1 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
2 Counsel (ECF No. 90).

3 **IT IS SO ORDERED.**

4 Dated: July 12, 2022.

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CRAIG S. DENNEY
UNITED STATES MAGISTRATE JUDGE